

Amendment No. 1 to HB2260

Niceley
Signature of Sponsor

AMEND Senate Bill No. 3487

House Bill No. 2260*

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 43, Chapter 24, Part 1, is amended by deleting such part in its entirety and by substituting instead the following:

§ 43-24-101.

This part shall be known and may be cited as the "Tennessee Community Gardening Act".

§ 43-24-102.

As used in this part, unless the context otherwise requires:

(1) "Community garden" means a piece of real property, either on vacant public land or on private land, cultivated by residents of a neighborhood or community, or members of a homeowners or condominium owners association for the purpose of providing vegetables, nuts, herbs, fruit, or flowers, whether by means of cultivating annual, biennial or perennial plants, or trees, for use of residents of the neighborhood or community or members of the homeowners or condominium owners association, or offered for sale so long as all proceeds from any such sales are used solely to defray the cost of operating and maintaining the community garden;

(2) "Garden" means a piece of land appropriate for the cultivation of herbs, fruits, nuts, flowers, vegetables or trees;

(3) "Local government" means any municipality, any county, and any metropolitan government;

(4) "Use" means, when applied to gardening, to make use of, without conveyance of title or any other ownership; and

(5) "Vacant public land" means any land owned by a local government that is not in use for public purposes.

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§ 43-24-103.

(a)

(1)

(A) It is the intent of this part to create authority for local governments to become involved in community gardening. In furtherance of this intent, local governments are authorized to establish their own community gardening programs.

(B) Any local government may allow and encourage the use of vacant public land for community gardening under terms and conditions established by ordinance in the case of municipalities and metropolitan governments and resolution in the case of counties. These local regulations may include, in addition to other requirements:

(i) A requirement for a permit for which a reasonable permit fee may be charged;

(ii) A requirement that the permittee provide security in the form of a refundable deposit or otherwise for proper clean-up of the garden after harvest is completed;

(iii) A requirement that the permittee possess liability insurance and accept liability for any injury or damage resulting from use of vacant public land for community gardening; and

(iv) A requirement that the permittee indemnify and save harmless the local government and its officers, agents and employees against suits and claims of liability arising out of, or in consequence of, the use of vacant public land.

(2) Any local government may establish a program, with the cooperation and assistance of the county agricultural extension agent, for the ready identification of vacant public land available for community gardening.

(3) Any local government may assist in the development of community gardens on vacant public land or on private property by expending funds and providing use of materials and equipment for these purposes, and these expenditures and uses shall be considered a valid public purpose.

(4) Any owner of private land, including but not limited to individuals, corporations, partnerships, sole proprietorships, homeowner associations, condominium associations, and other private property owners may make available to the local government parcels of land for community gardening under terms and conditions agreed upon between the local government and the owner.

(b) If there is a shortage of parcels or space for community gardening, first priority in the allotment of public land should be given to collaborative projects between persons sixty (60) years of age or older and students in kindergarten through twelfth (K-12) grade and second priority in the allotment of public land should be given to persons sixty (60) years of age or older and persons whose gross annual income is equal to or less than the poverty guidelines published annually in the Federal Register by the United States Department of Health and Human Services under the authority of 42 U.S.C. § 9909(2).

(c) Community gardens located on private property and operated without the intervention of a local government are not subject to the permitting, security, insurance, and indemnification requirements authorized in subdivision (a)(1)(B)(i)-(iv), but these and other provisions may be agreed upon by the parties. Community gardens located on private property shall comply with applicable state and local regulations relative to nuisances, property maintenance, and health, safety, and welfare of the public.

§ 43-24-104.

It is the policy of the state to encourage community gardening on both public and private property, and to that end this part shall be liberally construed. Local governments, homeowner

or condominium associations, neighborhood or community associations, and private property owners are urged to expedite the use of vacant or unused real property under their control for community gardening to the furthest extent practicable.

SECTION 2. Tennessee Code Annotated, Title 49, Chapter 6, Part 10, is amended by adding the following as a new, appropriately designated section:

49-6-10___. In cooperation and consultation with the department of health, the department of agriculture, and the department of finance and administration, the state board of education shall develop and implement a program to promote the participation of students in kindergarten through twelfth (K-12) grade in the development and maintenance of community gardens, as defined in § 43-24-102. Such program may include, but is not limited to, offering elective credits for students' participation in community gardening.

SECTION 3. Tennessee Code Annotated, Section 67-5-2509(d), is amended by adding the following as a new subdivision:

(6) In lieu of the sale to private purchasers as provided in subsection (b), the proper officers of the municipality or county may convey real property suitable for community gardening, as defined in § 43-24-102, to a private nonprofit entity that meets all conditions specified in this subdivision (d)(6), on any terms deemed appropriate to the officers:

(A) The entity is certified as a tax exempt entity under § 501(c)(3) of the Internal Revenue Code (26 U.S.C. § 501(c)(3);

(B) The entity is qualified to operate and maintain a community garden in the judgment of the officers of the municipality or county; and

(C) Any interest in or use of real property conveyed pursuant to this subdivision (d)(6) shall revert to the municipality or county if the entity, or a successor nonprofit entity that meets all of the conditions of this subdivision (d)(6), ceases to operate and maintain a community garden on the property.

SECTION 4. Tennessee Code Annotated, Section 67-6-301, is amended by adding the following as a new subsection:

(d) The gross proceeds derived from the sale in this state of products that are grown or produced in a community garden, as defined in § 43-24-102, in any calendar year, directly from a representative of the community garden, are exempt from the tax levied by this chapter, if all of such proceeds are used to defray the cost of operating and maintaining the community garden.

SECTION 5. Tennessee Code Annotated, Section 71-2-105(a), is amended by adding the following as new, appropriately designated subdivision:

() Make available to older persons information concerning the nutritional benefits of eating garden produce to promote participation by older persons in community gardens, as defined in § 43-24-102.

SECTION 6. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 7. This act shall take effect upon becoming a law, the public welfare requiring it.